Lim Peng Kok @ Lim Mah Lik & Ors v Ang Kui Hua

COURT OF APPEAL (BRUNEI DARUSSALAM) — CIVIL APPEAL NO 13 OF 2010
MORTIMER P, DAVIES AND ROGERS JJA
24 MAY 2011

English Law — Application and modification of English Law — Brunei — Application by children to administer mother's estate — Mother of unsound mind — Application based on English law on administration of estates of lunatics — No similar provision under Brunei law — Whether Lunacy Acts of England could be adopted — Construction of s 2 of the Application of Laws Act 1951 of Brunei

With the consent of their siblings, three of the 12 children of an 84 year old woman, who was of unsound mind and incapable of managing her affairs, applied to the High Court for orders that they be appointed receivers of her estate and be granted additional powers including a power of sale. The application was made pursuant to the UK Lunacy Acts of 1890 and 1908 ('the UK Lunacy Acts') as there was no Brunei law that permitted the making of such orders. The Lunacy Act in Brunei of 1929 ('the Brunei Lunacy Act'), only adapted, with modifications, two sections of the UK Lunacy Acts which dealt with the apprehension and detention of lunatics. No part of the Brunei Lunacy Act or any other legislation provided for the administration of the estate of a lunatic. The UK Lunacy Acts could be applied in Brunei if permitted by s 2 of the Application of Laws Act of 1951 ('the Act'), which allowed the common law of England, the doctrines of equity and statutes of general application as administered or in force in England at the commencement of the Act to apply in Brunei, 'save in so far as other provision has been or may hereafter be made by any written law in force in Brunei'. In dismissing the application, the High Court held the deliberate omission of the Brunei Lunacy Act to adopt or adapt the provisions in the UK Lunacy Acts concerning the administration of the estates of lunatics made that Act an 'other provision … made by (a) written law in force in Brunei' within the meaning of s 2 of the Act and, accordingly, those provisions relating to the administration of estates of lunatics in the UK Lunacy Acts could not be applied in Brunei. The applicants appealed the dismissal to the Court of Appeal.

Held, allowing the appeal with costs and setting aside the decision of the High Court:

(1) The phrase 'other provision' in s 2 of the Act could be construed to mean an inconsistent provision on the same subject matter. So that, while ss 2, 3, and 4 of the Brunei Lunacy Act were 'other provisions' on one of the

subjects of the UK Lunacy Acts, namely, the apprehension of lunatics and their admission into an institution, there was no 'other provision' in respect of the other subjects of the UK Acts, including the administration of the estates of lunatics (see para 17).

(2) As appeared from the English Acts, there were many other aspects of a lunatic's care and treatment and care and control of a lunatic's property that was not touched upon by the Brunei Lunacy Act. The latter Act was, therefore, not an 'other provision' that excluded the application of the provisions of the UK Lunacy Acts so far as they related to the administration of the estate of a lunatic (see paras 24 & 27).

(3) The UK Lunacy Acts affected the public at large and were consequently Acts 'of general application'. Hence the provisions in those Acts with respect to the administration of the property of a lunatic applied in Brunei (see paras 30–31).

[Bahasa Malaysia summary

Dengan persetujuan adik-beradik mereka, tiga daripada 12 anak kepada wanita berumur 84 tahun, yang tidak berfikiran waras dan tidak berupaya menguruskan dirinya, telah memohon ke Mahkamah Tinggi untuk perintah-perintah agar mereka dilantik sebagai penerima-penerima harta pusakanya dan diberikan kuasa tambahan termasuklah kuasa jualan. Permohonan itu telah dibuat menurut Lunacy Act 1890 dan 1908 UK ('Lunacy Act UK') kerana tiada undang-undang Brunei yang membenarkan perintah-perintah sedemikian dibuat. Brunei Lunacy Act 1929 ('Brunei Lunacy Act'), hanya diadaptasikan, dengan perubahan, dua seksyen Lunacy Act UK yang membincangkan tanggapan dan tahanan orang gila. Tiada bahagian Brunei Lunacy Act atau apa-apa perundangan lain yang memperuntukkan untuk pentadbiran harta pusaka orang gila. Lunacy Act UK boleh digunapakai di Brunei jika dibenarkan oleh s 2 Application of Laws Act of 1951 ('Akta tersebut'), yang membenarkan *common Law* England, doktrin ekuiti dan statut pemakaian am sebagaimana ditadbir atau berkuat kuasa di England pada permulaan Akta tersebut untuk digunapakai di Brunei, 'save in so far as other provision has been or may hereafter be made by any written law in force in Brunei'. Dengan menolak permohonan itu, Mahkamah Tinggi memutuskan peninggalan sengaja Brunei Lunacy Act untuk menggunapakai atau mengadaptasi peruntukan-peruntukan dalam Lunacy Act UK berkaitan pentadbiran harta pusaka orang gila yang menjadikan Akta tersebut 'other provision … made by (a) written law in force in Brunei' dalam maksud s 2 Akta tersebut dan, sewajarnya, peruntukan-peruntukan tersebut berkaitan pentadbiran harta pusaka orang gila dalam Lunacy Act UK tidak boleh digunapakai di Brunei. Permohon-pemohon telah merayu terhadap penolakan itu ke Mahkamah Rayuan.

Diputuskan, membenarkan rayuan dengan kos dan mengetepikan keputusan Mahkamah Tinggi:

(1) Istilah 'other provision' dalam s 2 Akta tersebut boleh ditafsirkan sebagai bermaksud satu peruntukan tidak konsisten berhubung perkara yang sama. Oleh itu, walaupun ss 2, 3, dan 4 Brunei Lunacy Act merupakan 'other provisions' berhubung salah satu perkara Lunacy Act UK, iaitu, tanggapan orang gila dan kemasukan mereka ke sesebuah institusi, tiada 'other provision' berkaitan perkara lain berhubung Akta UK tersebut, termasuklah pentadbiran harta pusaka orang gila (lihat perenggan 17).

(2) Sepertimana terdapat dalam Akta-Akta Inggeris, terdapat banyak aspek lain berhubung penjagaan dan rawatan orang gila dan penjagaan dan kawalan harta orang gila yang tidak dibincangkan dalam Brunei Lunacy Act. Lunacy Act, dengan itu, bukan 'other provision' yang mengecualikan pemakaian peruntukan-peruntukan Lunacy Act UK setakat mana berkaitan dengan pentadbiran harta pusaka orang gila (lihat perenggan 24 & 27).

(3) Lunacy Act UK member kesan kepada masyarakat umum dan juga Akta-Akta 'of general application'. Justeru itu peruntukan-peruntukan dalam Akta-Akta berikut berkaitan pentadbiran harta pusaka orang gila digunapakai di Brunei (lihat perenggan 30–31).]

Notes

For a case on Brunei, see 6 *Mallal's Digest* (4th Ed, 2010 Reissue) para 2368.

Cases referred to

Baiduri Bank Bhd v Pengiran Datin Hajah Za'baedah bte PRW Pg Hj Metussin and Anor [2001] BLR 241 (refd)

Blackburn, Jack and Ors v Boon Engineering & Construction Sdn Bhd, Civil Suit No 289 of 1986 (distd)

Bong Sau Fei v Chong Chui Lien and Anor [1965–1986] 2 BLR 124 (refd)

Lee Fatt Khong and Lee Fatt Shoon v Baiduri Bank Bhd, Civil Appeal No 28 of 2008 (distd)

Swee Pte Ltd v Lim Kian Chai and Anor [1983] 1 MLJ 353 (refd)

Legislation referred to

Application of Laws Act 1951 [BR] s 2
Chinese Marriage Act 1955 [BR]
Contracts Act [BR]
Debtors Act [BR]
Inventions Act [BR]
Land Code [BR]
Law of Property Act 1925 [UK]
Lunacy Act 1890 [UK] ss 15, 16, 116, 116(1)(d), (3), (4), 117(1), 120

Lunacy Act 1908 [UK] s 1
Lunacy Act Chapter 48 [BR] ss 2, 3, 4, 5, 6, 7
Matrimonial Causes Act 1950 [UK]
Mental Health Act [UK]
Patents Act [UK]

Geetha Menon (Abrahams Davidson & Co) for the appellants.
Respondent in person.

Davies JA:

[1] Ang Kui Hua, who is a woman of 84 years of age, is of unsound mind and incapable of managing her affairs. Three of her children, the applicants, appellants, who are acting with the consent of the others, have applied to the High Court for orders pursuant to the Lunacy Act 1890 and the Lunacy Act 1908 UK, including that they be appointed receivers of her estate and that they be granted additional powers, including a power of sale. The Chief Justice dismissed their application, holding that those Acts are not part of the law of Brunei Darussalam. This is an appeal against that dismissal. It was common ground before the learned Chief Justice and it is common ground in this court that there is no Brunei statute which permits the making of such orders.

[2] The English Acts referred to can be part of the law of Brunei only if they are applied by s 2 of the Application of Laws Act, Chapter 2. That section provides:

> Subject to the provisions of this Act and save in so far as other provision has been or may hereafter be made by any written law in force in Brunei Darussalam, the Common Law of England and the doctrines of equity, together with statutes of general application, as administered or in force in England at the commencement of this Act, shall be in force in Brunei Darussalam:
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> Provided that the said Common Law, doctrines of equity and statutes of general application shall be in force in Brunei Darussalam so far only as the circumstances of Brunei Darussalam and of its inhabitants permit and subject to such qualification as local circumstances and custom render necessary.

[3] The *Application of Laws Act* commenced on 25 April 1951. The English law with respect to lunatics, in particular with respect to administration of the estates of lunatics, at the commencement of that Act, was contained in the Lunacy Act 1890, as subsequently amended. Those Acts were together repealed and replaced in England in 1959 by the *Mental Health Act* of that year.

[4] Two questions, in particular, arise in the application of s 2 of the Application of Laws Act to the circumstances of this case. The first, which arises

under the first paragraph of that section, is whether some other provision had been made or was thereafter made by a written law in force in Brunei Darussalam. More specifically, the question is whether the Lunacy Act, Chapter 48, Brunei, which commenced on 9 July 1929 is such a law.

[5] The second, which also arises under that paragraph, is the meaning and application of the phrase 'statutes of general application'. Are the *Lunacy Acts* England, statutes of general application?

IS THE LUNACY ACT, CHAPTER 48, AN 'OTHER PROVISION … MADE BY [A] WRITTEN LAW IN FORCE IN BRUNEI DARUSSALAM'?

[6] In order to answer that question it is necessary to analyse briefly some of the provisions of the *Lunacy Acts* England and of the Lunacy Act, Chapter 48.

[7] The Lunacy Act 1890 England, the principal Act, was in 12 Parts. Part I was headed 'RECEPTION OF [PERSONS OF UNSOUND MIND]'. The phrase 'PERSONS OF UNSOUND MIND' was substituted for 'LUNATICS' at a later date.

[8] Part II was headed 'CARE AND TREATMENT'. Part III was headed 'JUDICIAL INQUISITION AS TO LUNACY'.

[9] Part IV was headed 'JUDICIAL POWERS OVER PERSONS AND ESTATES OF [PERSONS OF UNSOUND MIND]'. It was in this Part that the court had power to authorise and control the administration of the estate of a person of unsound mind, including a power to permit sale of his or her property. See ss 116 and 120.

[10] Part V provided for a Board of Control. Part VI provided for visitors. Part VII provided for visitations. Part VIII provided for licensed houses and hospitals. Part DC provided for county and borough asylums. Part X was repealed. Part XI provided for penalties, misdemeanours and proceedings. And Part XII contained miscellaneous provisions and definitions.

[11] It can be seen from this brief summary that the Act legislated for a diverse number of topics, linked only by the fact that they all related to lunatics. We will return later to the effect of legislation such as this. But first we should go to Part I, specifically ss 15 and 16. They were in the following terms:

> 15 Persons of unsound mind wandering at large to be brought before a justice.
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> (1) A duly authorised officer of the local health authority or any constable who has reasonable grounds for believing that any person wandering at large in the area of

the authority is a person of unsound mind, shall immediately apprehend and take the said person, or cause him to be apprehended and be taken before a justice.

(2) Any justice, upon the information upon oath of any person that a person wandering at large within the limits of his jurisdiction is of unsound mind, may by order require any constable or duly authorised officer of the local health authority for the area where the person is, to apprehend him and bring him before the justice making the order, or any justice having jurisdiction where the person is.

16 Persons of unsound mind brought before a justice may be sent to an institution for persons of unsound mind.

The justice before whom a person alleged to be a person of unsound mind or an alleged person of unsound mind wandering at large is brought under this Act shall call in a medical practitioner, and shall examine the alleged person of unsound mind, and make such inquiries as he thinks advisable, and if upon such examination or other proof the justice is satisfied in the first mentioned case that the alleged person of unsound mind is a person of unsound mind and a proper person to be detained, and, in the secondly mentioned case, that the alleged person of unsound mind is a person of unsound mind, and was wandering at large, and is a proper person to be detained, and, if in each of the foregoing cases the medical practitioner who has been called in signs a medical certificate with regard to the person of unsound mind, the justice may by order direct the person of unsound mind to be received and detained in the institution of persons of unsound mind named in the order, and the officer or constable who brought the person of unsound mind before the justice, or in the case of a person of unsound mind wandering at large, any constable who may by the justice be required so to do, shall forthwith convey the person of unsound mind to such institution.

[12] The Lunacy Act, Chapter 48, which, as we have said, commenced in Brunei on 9 July 1929, is a short Act of only seven sections. Sections 2, 3 and 4, which may be described as the principal operating sections, are, relevantly, in the following terms:

2(1) any police officer may arrest or cause to be arrested any person found wandering at large whom he has reason to believe to be a lunatic who is dangerous or unfit to be at large.

(2) any person so arrested shall be taken forthwith before a magistrate.

3 Any police officer who has reason to believe that any person is a lunatic and is not under proper care and control or is cruelly treated or neglected by any relative or other person having charge of him, shall immediately report the fact to a magistrate.

4 When any person is brought before a magistrate under the provisions of section 2 the magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer and may make such other inquiries as he thinks fit; and if the magistrate is satisfied that such

A person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into a mental hospital.

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B

[13] Section 5 provides for the apprehension and detention of a lunatic who is not under proper care and control or who is cruelly treated or neglected by a person in charge of him; and for dealing with such a person. And ss 6 and 7 provide for detention pending receipt of a medical report.

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[14] It can be seen that ss 2, 3 and 4 of the Brunei Act which we had set out are adaptations, no doubt thought to be appropriate to Brunei, of ss 15 and 16 of the Lunacy Act 1890 England, and, because they provide differently, they are inconsistent with ss 15 and 16. It may be thought to be significant, however, that the Brunei Legislature did not implement, whether with adaptation or not, any part of the remainder of the English Act. Specifically it did not provide for administration of the estate of a lunatic. Nor is there any other statutory provision in Brunei permitting such administration.

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[15] It is arguable that the failure of the Brunei Legislature in the Lunacy Act, Chapter 48, to enact provisions permitting administration of the estate of a lunatic, when taken together with the specific provisions of that Act set out above, is an 'other provision … made by [a] written law in force in Brunei Darussalam' within the meaning of s 2 of the Application of Laws Act with respect to the *Lunacy Acts*; and that consequently the remaining provisions of those Acts have no application in Brunei. In other words, the enactment by the Brunei Legislature of some sections of an English statute and a deliberate decision not to enact others is as much an 'other provision' with respect to the matters contained in those others, within the meaning of s 2, as if, with respect to the matters contained in those other sections, the Brunei Legislature had enacted different and inconsistent provisions.

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[16] That was the view which the learned Chief Justice took. He held that the provisions of the *Lunacy Acts* England, with respect to administration of the estates of lunatics are excluded, by the above saving provision in s 2 of the Application of Laws Act, from applying in Brunei; and that the appellants therefore cannot rely on those provisions.

H

I

[17] We think that there is another view of the enactment of the Brunei *Lunacy Act.* This follows, we think, from construing the phrase 'other provision' in s 2 of the Application of Laws Act as meaning an inconsistent provision on the same subject matter. So that while ss 2, 3 and 4 are 'other provisions' on one of the subjects of the UK Acts, the apprehension of lunatics and their admission

into an institution, there is no 'other provision' in respect of the other subjects of the UK Acts, including the administration of the estates of lunatics.

[18] That appears to be the way in which this phrase has been interpreted and applied by courts in this country, though it must be said that, in some of the cases to which we are about to refer, the concern of the court appears to have been more with the question, to which we will come shortly, of the meaning and application of the phrase 'statutes of general application' in s 2 than with whether the Brunei Act is an 'other provision' within the meaning of that section.

[19] *Bong Sau Fei v Chong Chui Lien and Anor* [1965–1986] 2 BLR 124 is a case in which the court seemed not to consider at all whether the relevant Brunei statute was an 'other provision' within the meaning of s 2. Nevertheless it stands as a decision of the High Court that the Chinese Marriage Act 1955 Brunei, was not such a provision, thereby permitting the Matrimonial Causes Act 1950 UK to apply to permit an order by a Brunei Court dissolving a Chinese marriage. The *Chinese Marriages Act* provided for the registration of marriages by Chinese law or custom. It also prescribed penalties for adultery and other matrimonial offences. But it did not provide for dissolution of such marriages. The court's conclusion that the *Matrimonial Causes Act* applied to permit such dissolution was possible, it seems to us, only because the court must also have concluded that it was sufficient, in order to find that the Brunei Act was not an 'other provision', that it had no inconsistent provision on the subject of dissolution even though it dealt with marriage, including its breakdown.

[20] In *Swee Pte Ltd v Lim Kian Chai and Anor* [1983] 1 MLJ 353 the Brunei High Court held that the *Contracts Act*, Brunei, did not exclude the application in Brunei of the English *Arbitration Act.* The former Act dealt with contracts generally; it said nothing about arbitration thereunder. It was held that there was no inconsistency between them.

[21] In *Baiduri Bank Bhd v Pengiran Datin Hajah Za'baedah bte PRW Pg Hj Metussin and Anor* [2001] BLR 241 it was held that the *Land Code* of Brunei was not an 'other provision' excluding the application in Brunei of the assignment provisions of the English Law of Property Act 1925 which provided for assignment of choses of action. Whilst that conclusion is, perhaps, self evident, the learned judge said:

> But where Brunei Darussalam legislation does not deal with a point of law at all, part of an English Act dealing with that point must be applied.

[22] That statement would make equal sense if 'subject matter' were substituted for 'point of law'.

[23] On the other hand, in *Lee Fatt Khong and Lee Fatt Shoon v Baiduri Bank Bhd,* Civil Appeal No 28 of 2008 it was held by this court that the *Debtors Act* Brunei, which made provision for the seizure of land in the execution of the judgment, in certain circumstances, excluded the application in Brunei of the English provisions on the same subject because, the court held, the Brunei Act was a comprehensive law on the subject of the seizure of moveable and immoveable property.

[24] This case is clearly distinguishable. The *Lunacy Act* Brunei, is plainly not a comprehensive law on the subject of lunatics. As appears from the English Acts, there are many other aspects of a lunatic's care and treatment and the care and control of a lunatic's property which it does not touch.

[25] In *Blackburn, Jack and Ors v Boon Engineering & Construction Sdn Bhd,* Civil Suit No 289 of 1986, it was held that the *Inventions Act* of Brunei was an 'other provision' excluding the application in Brunei of the English *Patents Act.* The Brunei Act dealt with the protection in Brunei of patents granted in the UK, Malaysia and Singapore but made no provision for the registration in Brunei of patents granted in Brunei. It was held, nevertheless, that it excluded the operation of the English Act because, it was said, its operation in Brunei would have resulted in different provisions applying to UK patents from those applying to those other countries. But it was also said, in effect, that the Brunei Act, by specifically applying to UK, Malaysian and Singapore patents, implicitly evinced an intention to exclude the registration of Brunei patents; and that it left no room for the application of the English Act.

[26] This case is also distinguishable. The subject of both statutes was the registration of patents. By excluding Brunei patents from its operation the Brunei Act implicitly excluded the application of an English Act to such patents.

[27] The decisions in these cases, we think, support the view which we have taken that 'other provision' in s 2 means one which is on the same subject as and inconsistent with the English law. And they support the view which we have taken that the *Lunacy Act* of Brunei is, relevantly, not such a provision excluding the application of the provisions of the English Acts so far as they relate to the administration of the estate of a lunatic.

ARE THE LUNACY ACTS, ENGLAND, STATUTES OF GENERAL APPLICATION?

[28] The answer to this question is much easier. In *Blackburn*, the Chief Justice adopted as correct a test propounded in an earlier Sarawak case as follows:

> I think that the clear intention of s 2 of the Application of Laws Ordinance is that, subject to the proviso and subject to local law, the statute law of England which affects the public at large and is not local or personal in its application shall be the law of Sarawak.

[29] The learned Chief Justice applied the test in the above case.

[30] We agree that that is the correct test. Applying it here, it is plain that the *Lunacy Acts* UK, affected the public at large and were consequently Acts of general application.

[31] It follows from what we have said that the provisions of the *Lunacy Acts* UK, with respect to the administration of the property of a lunatic apply in Brunei.

THE ORDERS SOUGHT IN THE ORIGINATING SUMMONS

The legislative provisions

[32] Section 116 of the 1890 Act provided:

(a) in sub-s (1)(d) that the powers and provisions of that Part relating to management and administration applied to every person with regard to whom it was proved to the satisfaction of the judge in lunacy that such person was, through mental infirmity arising from disease or age, incapable of managing his affairs;

(b) in sub-s (3) that every person appointed to do any such act or exercise any such a power should be subject to the jurisdiction and authority of the judge as if such person were the committee of the estate of a person of unsound mind so found by inquisition; and

(c) in sub-s (4) that the powers of the Act relating to management and administration should be exercisable at the discretion of the judge for the maintenance or benefit of the person or of him and his family, or where it appears to be expedient in the due course of management of the property of the person.

[33] Section 117(1) of that Act provided that the judge might order that any property of the person of unsound mind be sold, charged, mortgaged, dealt with, or disposed of as the judge thought most expedient for the purpose of raising or securing, or repaying with or without interest, money which was to be or which had been applied to payment of debts of the person, discharge of any incumbrance on his property, payment of any debt or expenditure incurred for maintenance of the person or otherwise for his benefit, or payment of or provision for expenses of his future maintenance.

[34] Section 120 of that Act provided that the judge might, by order, authorise and direct the committee of the estate of such person to do a number of things including to sell any property belonging to the person of unsound mind; to grant or surrender any leases of such property; and to perform any contract relating to such property.

[35] The Lunacy Act 1908, s 1 provided, in effect, that the powers of a committee might be exercised by such a person in such manner and with or without security as the judge might direct, and any such order might confer on that person authority to do any specified act or exercise any specified power or might confer a general authority to exercise until further order any or all of such powers without further application to the judge.

[36] Adapting those provisions to the circumstances of Brunei, it is plain, we think, that the powers formerly exercised by a judge in lunacy may be exercised by a High Court judge who, upon being satisfied by affidavit that a person is, through mental infirmity arising from disease or age, incapable of managing his affairs, may appoint a person or persons to exercise the powers formerly exercisable by a committee authorised by an order made under s 120 of the 1890 Act. However, such powers are exercisable only at the discretion of a judge for the maintenance or benefit of the person or where it appears to be expedient in the due course of the management of the property of the person.

The relevant facts

[37] Two reports from a consultant neurologist exhibited to the affidavit of the applicants certified that Ang Kui Hua had no mental capacity to take in information or express decisions, from which it may be inferred that she is incapable of managing her affairs. The first of these reports also indicated that this was the result of brain disease. It follows that it was appropriate to appoint persons to manage and administer her property and to exercise the powers which might have been conferred under the above Acts.

[38] The powers sought by the originating summons are very wide. It is

necessary to consider some further facts in order to determine whether all or any of these powers are justified and, if not, what orders should be made.

[39] In the first place it should be noted that, though the application is made by three only of Ang's children, all 12 of them have signed a consent to this application and to the making of all of the orders sought. Secondly it should be noted that Ang is not admitted to an institution but is under the care of those children all of whom are adult.

[40] Thirdly it appears from the affidavit that Ang and one of the applicants are the owners, in equal proportions of a residential housing development over which there is a secured debt to United Overseas Bank Ltd of $1.7m. On 17 May 2005, before Ang became incapable of managing her affairs, she and that applicant executed an agreement as to the division of those properties and the identification of their respective shares therein. The agreement provided that Ang would be entitled to Lots Nos 1 – 8, identified in the schedule; that the applicant would be entitled to Lots Nos 9 – 16 therein; and that a vacant lot also identified therein would remain in their ownership in equal undivided shares. The agreement went on to provide that, upon the request of either party (in this case the applicant) the parties would execute transfers and any further security documents requested by the bank, to give effect to that division. The parties agreed that the outstanding payments of the above debt would continue to be paid out of the rental income from the properties, that such rental income would continue to be paid into a numbered bank account with United Overseas Bank Ltd in the parties' joint names, that all outstanding amounts unpaid under the loan would be paid by the applicant, in any event, on demand by the bank and that all necessary costs will be borne by the applicant. The completion of this agreement appears to be the subject of one of the orders sought.

OUR CONCLUSIONS ON THE ORDERS SOUGHT IN THE ORIGINATING SUMMONS

[41] We will follow the numbering of the orders sought in the originating summons.

(a) Under the *Lunacy Acts* it does not appear to be necessary, in order to make orders for the administration and management of the estate of a person found to be incapable of managing her affairs, to make a declaration of the kind sought in this paragraph. Nevertheless we think it appropriate to make such a declaration;

(b) we do not see the need for any such order. In particular, we do not understand the use of the term 'Receivers'. However we think that an

order should be made appointing the applicants as persons to manage and administer the property of Ang Kui Hua;

(c) (i) and (ii). Both of these subparagraphs appear to be related to a specific proposed sale to Lim Guat Wen. The affidavit in support of the application does not refer to any such proposed sale. A court should not authorise any such sale without first being satisfied that the sale price represents the full value of the property, that Ang will not remain liable for any part of the debt secured by the property and that the proceeds of sale of such property will be invested in safe investments on behalf of Ang. This court therefore declines to make any of the orders sought. An application for an order for the sale of this property, and for any consequential orders, may be made by the applicants to a High Court judge at any time, supported by evidence of the matters to which we have referred;

(iii) The powers sought by this paragraph are wider than those which may be conferred under ss 117 to 120 of the 1890 Act all of which have in mind specific proposals. Moreover, although a judge may confer on the applicants, after their appointment, specific powers of sale, lease, surrender and charge or mortgage, the judge would need to be satisfied, in each case, that the transaction was for the maintenance or benefit of Ang or of her and her family, or that it appears to be expedient in the due course of management of Ang's property. Accordingly we decline to make any of the orders sought in this subparagraph;

(iv) We do not have before us any deed of gift. However counsel has confirmed that the reference in this subparagraph is to the agreement of that date exhibited to the affidavit; an agreement between Ang and the applicant Lim Peng Kok for division of property jointly owned. We have earlier summarised that agreement. We think that Lim is entitled to have that agreement performed, subject to the obligations which he accepts in the agreement. However that is not what is sought which is a power of attorney in his favour in respect of those lots to which he is entitled under the agreement. We do not see how the execution of such a power would achieve such performance. Nor would we authorise or direct the execution of any such power without an assurance that it would not detrimentally affect Ang's liability under the debt to the Bank. We therefore decline to make the order sought in this subparagraph. However, after discussion with counsel, we have concluded that the order which we have set out at para 4 of the orders which we make will achieve that performance whilst, at the same time, preserving Ang's property and rights;

(v) We propose to make orders which give affect to what is sought in this subparagraph;

(vi), (vii) and (viii). The orders sought in each of these subparagraphs are unnecessary; and

(ix) We propose to make the order sought in this subparagraph.

ORDERS

[42]

(a) Allow the appeal;

(b) set aside the judgment of the learned Chief Justice;

(c) appoint the applicants, Lim Peng Kok @ Lim Mah Lik, Lim Guat Hong and Lim Peng Wee as persons who may exercise the powers of management and administration of a committee of the estate of Ang Kui Hua pursuant to the Lunacy Act 1890, England, and the Lunacy Act 1908 England;

(d) authorise and direct Lim Peng Kok @ Lim Mah Lik, Lim Guat Hong and Lim Peng Wee, as persons who may exercise such powers, to join with the said Lim Peng Kok in giving effect to a request by the said Lim Peng Kok pursuant to cl 3.1 of an agreement dated 17 May 2005 between the said Ang Kui Hua and the said Lim Peng Kok;
And to that end appoint the said Lim Peng Kok, Lim Guat Hong and Lim Peng Wee attorneys of the said Ang Kui Hua for the purpose of executing all documents necessary to give effect to the transfers of lots 1 to 8, identified in cl 1.2(a) of the said agreement, to themselves in their representative capacity; and to give effect to the transfers of lots 9 to 16, identified in cl 1.2(b) of the said agreement, to Lim Peng Kok.
Provided that:

(i) the existing liability of Ang Kui Hua to the United Overseas Bank Ltd, referred to in recital (6) and cl 5 of the said agreement is not thereby increased;

(ii) until the said liability is discharged the said Lim Peng Kok will continue to pay the rental incomes of lots nine to 16 to the said United Overseas Bank Ltd in discharge of that liability and the said Lim Peng Kok will continue to pay the rental income of lots one to eight to the said bank in discharge of that liability;

(iii) as between the parties to the said agreement the said Lim Peng Kok accepts full responsibility to pay any part of the said liability at any time, upon demand by the said bank; and

(iv) upon discharge of the said liability the rental incomes of lots one to eight will be used or invested for the maintenance or benefit of the said Ang Kui Hua subject to any further directions of the court.

A (e) order the applicants to prepare, annually, accounts of their management and administration as aforesaid, file a copy thereof in the High Court within three months of the end of the financial year, and forward a copy thereof to each of the other children of Ang Kui Hua, identified in the applicants' affidavit filed herein;

B (f) unless otherwise ordered, order the applicants to pay all monies received on behalf of Ang Kui Hua, other than the monies referred to in para 5.2 of the agreement between Ang Kui Hua and Lim Mah Lik @ Lim Peng Kok dated 17 May 2005, into an identified bank account in their joint names, to be expended, in the discretion of a judge, for the maintenance C or benefit of Ang Kui Hua or where it appears to be expedient in the due course of management of her property; and

(g) order that the costs of the application and appeal be paid by Lim Peng Kok @ Lim Mah Lik.

D *Appeal allowed with costs and decision of the High Court set aside.*

Reported by Ashok Kumar

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